

2/22/2007

Testimony of Paul Nachman (406-587-2488, Bozeman) re HB767

I support the intent of HB767. My opinion is informed by ten years' living in California and seeing the effects of unhampered illegal immigration there.

For example: "Overburdened by the uninsured and overwhelmed by illegal immigration, public health care in Los Angeles is on life support." (Fox News, March 18, 2005). And 70 emergency rooms or trauma centers in California have closed down since 1990, in a state with 500 hospitals. (*New York Times*, August 21, 2004)

Montana should try to prevent such problems. That's the reason for this bill.

However, as written, it's skeletal. A lawyer from the Federation for American Immigration Reform (FAIR) who knows this subject very well told me that HB767, if enacted, won't survive challenges and can't do what's wanted.

So I'd like to point you to the omnibus law Georgia passed last year to combat illegal immigration. Section 9 of the Georgia law denies benefits to ineligible recipients, including illegal aliens, **as they are supposed to be denied according to federal law**. An applicant for benefits must sign an affidavit that he is a citizen or a legal alien. For any such alien, the agency must verify the person's status through the federal Systematic Alien Verification of Entitlement [SAVE] program. Submitting a false affidavit is a felony, and that's a deportable offense for aliens.

I'm a physicist, not a lawyer or legislative analyst, so maybe my suggestion is naive. Nevertheless, I propose that, in the executive action session for HB767, you substitute Section 9 of the Georgia *law en masse* for the present text, making minor adjustments for intelligibility and compatibility with Montana's code. My second page has the full text of Section 9.

Despite the fact that I'm a physicist, I'm confident that this approach is constitutional. That's because all Georgia has done is use available federal tools to comply with existing federal law.

In looking into this subject and this bill, I've learned that some Montana agencies are familiar with the SAVE program and are using it to verify eligibility. Of course that's excellent. However, I think it's not universal. For example, the people dealing with Section 8 housing vouchers at the public housing agency in Missoula seemed to be unfamiliar with SAVE. So the bill would tighten up procedures, where needed, statewide.

I expect there will be objections to this bill on the general grounds that "We don't have a problem with illegal aliens using public benefits in Montana." I'll readily believe it's not a **big** problem.

But if even \$1 of Montana public benefits is going to ineligible people while eligible citizens and legal immigrants are shortchanged --- public budgets are finite, after all --- that's an outrage.

And supposing the problem is small, what's the disadvantage in having these verification requirements on the books? Having them in place is a way to make sure the problem doesn't get big. And we certainly want the problem to stay small, because when it gets big, the objections you'll likely hear to legislation such as this are that the problem is too big to do anything about. That's the story in California, Texas, Arizona, Nevada ...

Section 9 of the Georgia Security and Immigration Compliance Act, signed into law April 17, 2006, could be used, nearly intact, in place of the original text in HB767.

What Section 9 does: Anyone *applying* for state or local public benefits who is 18 years or older must execute an affidavit that s/he is a citizen or is lawfully present in the U.S. For any applicant who indicates that s/he is a lawfully present alien, the agency must verify that person's status through the federal Systematic Alien Verification of Entitlement [SAVE] program. Knowingly executing a false affidavit is a felony, a deportable offense for aliens. There are exceptions, federally-prescribed, for this verification requirement, e.g. some kinds of emergency medical care, immunizations against communicable diseases, soup kitchens, and short-term, non-cash disaster relief.

TEXT OF SECTION 9

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter at the end thereof, to be designated Chapter 36, to read as follows:
"CHAPTER 36

50-36-1.

(a) Except as provided in subsection (c) of this Code section or where exempted by federal law, on or after July 1, 2007, every agency or a political subdivision of this state shall verify the lawful presence in the United States of any natural person 18 years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that is administered by an agency or a political subdivision of this state.

(b) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(c) Verification of lawful presence under this Code section shall not be required:

- (1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;
- (2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;
- (3) For short-term, noncash, in-kind emergency disaster relief;
- (4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease; or
- (5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:
 - (A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety.

(6) For prenatal care; or

(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia or the State Board of Technical and Adult Education shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(d) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall occur as follows:

(1) The applicant must execute an affidavit that he or she is a United States citizen or legal permanent resident 18 years of age or older; or

(2) The applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act 18 years of age or older lawfully present in the United States.

(e) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this Code section.

(f) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) of this Code section shall be guilty of a violation of Code Section 16-10-20.

(g) Agencies or political subdivisions of this state may adopt variations to the requirements of this Code section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances where the verification procedures in this Code section would impose unusual hardship on a legal resident of Georgia.

(h) It shall be unlawful for any agency or a political subdivision of this state to provide any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section 1611, in violation of this Code section. Each state agency or department which administers any program of state or local public benefits shall provide an annual report with respect to its compliance with this Code section.

(i) Any and all errors and significant delays by SAVE shall be reported to the United States Department of Security and to the Secretary of State which will monitor SAVE and its verification application errors and significant delays and report yearly on such errors and significant delays to ensure that the application of SAVE is not wrongfully denying benefits to legal residents of Georgia.

(j) Notwithstanding subsection (f) of this Code section any applicant for federal benefits as defined in 8 U.S.C. Section 1611 or state or local benefits as defined in 8 U.S.C. Section 1621 shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the United States that contains a false statement if said affidavit is not required by this Code section."